



Senate

General Assembly

File No. 313

January Session, 2007

Substitute Senate Bill No. 1179

Senate, April 4, 2007

The Committee on Commerce reported through SEN. LEBEAU of the 3rd Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

AN ACT REQUIRING ECONOMIC IMPACT ANALYSES FOR PROPOSED REGULATIONS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Subsection (a) of section 4-168 of the general statutes is
2 repealed and the following is substituted in lieu thereof (*Effective*
3 *October 1, 2007*):

4 (a) Except as provided in subsection (g) of this section, an agency,
5 prior to adopting a proposed regulation, shall: (1) Give at least thirty
6 days' notice by publication in the Connecticut Law Journal of its
7 intended action. The notice shall include (A) either a statement of the
8 terms or of the substance of the proposed regulation or a description
9 sufficiently detailed so as to apprise persons likely to be affected of the
10 issues and subjects involved in the proposed regulation, (B) a
11 statement of the purposes for which the regulation is proposed, (C) a
12 reference to the statutory authority for the proposed regulation, (D)
13 when, where and how interested persons may obtain a copy of the
14 economic impact and regulatory flexibility analyses required pursuant

15 to section 4-168a, as amended by this act, and [(D)] (E) when, where
16 and how interested persons may present their views on the proposed
17 regulation; (2) give notice by mail to each joint standing committee of
18 the General Assembly having cognizance of the subject matter of the
19 proposed regulation; (3) give notice by mail to all persons who have
20 made requests to the agency for advance notice of its regulation-
21 making proceedings. The agency may charge a reasonable fee for such
22 notice based on the estimated cost of providing the service; (4) provide
23 a copy of the proposed regulation and the economic impact and
24 regulatory flexibility analyses required pursuant to section 4-168a, as
25 amended by this act, to persons requesting it. The agency may charge a
26 reasonable fee for copies in accordance with the provisions of section
27 1-212; (5) following publication of the notice in the Connecticut Law
28 Journal, prepare a fiscal note, including (A) an estimate of the cost or of
29 the revenue impact on the state or any municipality of the state, and
30 (B) the economic impact analysis and, if applicable, the regulatory
31 flexibility analysis prepared under section 4-168a, as amended by this
32 act. The governing body of any municipality, if requested, shall
33 provide the agency, within twenty working days, with any
34 information that may be necessary for analysis in preparation of such
35 fiscal note; (6) afford all interested persons reasonable opportunity to
36 submit data, views or arguments, orally at a hearing granted under
37 subdivision (7) of this subsection or in writing, and to inspect and copy
38 the fiscal note prepared pursuant to subdivision (5) of this subsection;
39 (7) grant an opportunity to present oral argument if requested by
40 fifteen persons, by a governmental subdivision or agency or by an
41 association having not less than fifteen members, if notice of the
42 request is received by the agency within fourteen days after the date of
43 publication of the notice; and (8) consider fully all written and oral
44 submissions respecting the proposed regulation and revise the fiscal
45 note in accordance with the provisions of subdivision (5) of this
46 subsection to indicate any changes made in the proposed regulation.
47 No regulation shall be found invalid due to the failure of an agency to
48 give notice to each committee of cognizance pursuant to subdivision
49 (2) of this subsection, provided one such committee has been so

50 notified.

51 Sec. 2. Section 4-168a of the general statutes is repealed and the
52 following is substituted in lieu thereof (*Effective October 1, 2007*):

53 (a) As used in this section:

54 (1) "Agency", "proposed regulation" and "regulation" shall have the
55 same meanings as provided in section 4-166; and

56 (2) "Small business" means a business entity, including its affiliates,
57 that (A) is independently owned and operated and (B) employs fewer
58 than fifty full-time employees or has gross annual sales of less than
59 five million dollars, provided that an agency, in adopting regulations
60 in accordance with the provisions of this chapter, may define "small
61 business" to include a greater number of full-time employees, not to
62 exceed applicable federal standards or five hundred, whichever is less,
63 if necessary to meet the needs and address specific problems of small
64 businesses.

65 (b) (1) Prior to the adoption of any proposed regulation on and after
66 October 1, 2007, each agency shall prepare an economic impact
67 analysis that identifies the impact the regulatory action may have on
68 small businesses, including an estimate of the number of small
69 businesses subject to the proposed regulation, the projected costs,
70 including reporting, recordkeeping and administration, and other
71 costs required for compliance with the proposed regulation.

72 (2) Prior to the adoption of any proposed regulation, [on and after
73 October 1, 1994,] each agency shall prepare a regulatory flexibility
74 analysis in which the agency shall, where consistent with public
75 health, safety and welfare, consider utilizing regulatory methods that
76 will accomplish the objectives of applicable statutes while minimizing
77 adverse impact on small businesses. The agency shall consider,
78 without limitation, each of the following methods of reducing the
79 impact of the proposed regulation on small businesses:

80 [(1)] (A) The establishment of less stringent compliance or reporting

81 requirements for small businesses;

82 [(2)] (B) The establishment of less stringent schedules or deadlines
83 for compliance or reporting requirements for small businesses;

84 [(3)] (C) The consolidation or simplification of compliance or
85 reporting requirements for small businesses;

86 [(4)] (D) The establishment of performance standards for small
87 businesses to replace design or operational standards required in the
88 proposed regulation; and

89 [(5)] (E) The exemption of small businesses from all or any part of
90 the requirements contained in the proposed regulation.

91 (c) Prior to the adoption of any proposed regulation that may have
92 an adverse impact on small businesses, each agency shall notify the
93 Department of Economic and Community Development and the Office
94 of the Business Advocate of its intent to adopt the proposed regulation.
95 [The Department of Economic and Community Development] Said
96 department and office shall advise and assist agencies in complying
97 with the provisions of this section.

98 (d) The requirements contained in this section shall not apply to
99 emergency regulations issued pursuant to subsection (c) of section 4-
100 168; regulations that do not affect small businesses directly, including,
101 but not limited to, regulations concerning the administration of federal
102 programs; regulations concerning costs and standards for service
103 businesses such as nursing homes, long-term care facilities, medical
104 care providers, day care facilities, water companies, nonprofit 501(c)(3)
105 agencies, group homes and residential care facilities; and regulations
106 adopted to implement the provisions of sections 4a-60g to 4a-60i,
107 inclusive.

108 Sec. 3. Section 4-168b of the general statutes is repealed and the
109 following is substituted in lieu thereof (*Effective October 1, 2007*):

110 (a) Each agency shall maintain an official regulation-making record

111 for the period required by law for each regulation it proposes in
112 accordance with the provisions of section 4-168, as amended by this
113 act. The regulation-making record and materials incorporated by
114 reference in the record shall be available for public inspection and
115 copying.

116 (b) The agency regulation-making record shall contain: (1) Copies of
117 all publications in the Connecticut Law Journal with respect to the
118 regulation or the proceeding upon which the regulation is based; (2) a
119 copy of any written analysis prepared for the proceeding upon which
120 the regulation is based, including the economic impact and regulatory
121 flexibility analyses required pursuant to section 4-168a, as amended by
122 this act; (3) all written petitions, requests, submissions, and comments
123 received by the agency and considered by the agency in connection
124 with the formulation, proposal or adoption of the regulation or the
125 proceeding upon which the regulation is based; (4) the official
126 transcript, if any, of proceedings upon which the regulation is based
127 or, if not transcribed, any tape recording or stenographic record of
128 such proceedings, and any memoranda prepared by any member or
129 employee of the agency summarizing the contents of the proceedings;
130 (5) a copy of all official documents relating to the regulation, including
131 the regulation filed in the office of the Secretary of the State, a
132 statement of the principal considerations in opposition to the agency's
133 action, and the agency's reasons for rejecting such considerations, as
134 required pursuant to section 4-168, as amended by this act, and the
135 fiscal note prepared pursuant to subsection (a) of said section 4-168
136 and section 4-170, as amended by this act; (6) a copy of any petition for
137 the regulation filed pursuant to section 4-174; and (7) copies of all
138 comments or communications between the agency and the legislative
139 regulation review committee.

140 (c) The agency regulation-making record need not constitute the
141 exclusive basis for agency action on that regulation or for judicial
142 review thereof.

143 Sec. 4. Subsection (b) of section 4-170 of the general statutes is

144 repealed and the following is substituted in lieu thereof (*Effective*
145 *October 1, 2007*):

146 (b) (1) No adoption, amendment or repeal of any regulation, except
147 a regulation issued pursuant to subsection (f) of section 4-168, shall be
148 effective until (A) the original of the proposed regulation approved by
149 the Attorney General, as provided in section 4-169, the economic
150 impact and regulatory flexibility analyses as provided in section 4-
151 168a, as amended by this act, and eighteen copies thereof are
152 submitted to the standing legislative regulation review committee at
153 the designated office of the committee, in a manner designated by the
154 committee, by the agency proposing the regulation, (B) the regulation
155 is approved by the committee, at a regular meeting or a special
156 meeting called for the purpose, and (C) the regulation is filed in the
157 office of the Secretary of the State by the agency, as provided in section
158 4-172. (2) The date of submission for purposes of subsection (c) of this
159 section shall be the first Tuesday of each month. Any regulation
160 received by the committee on or before the first Tuesday of a month
161 shall be deemed to have been submitted on the first Tuesday of that
162 month. Any regulation submitted after the first Tuesday of a month
163 shall be deemed to be submitted on the first Tuesday of the next
164 succeeding month. (3) The form of proposed regulations which are
165 submitted to the committee shall be as follows: New language added
166 to an existing regulation shall be in capital letters or underlining, as
167 determined by the committee; language to be deleted shall be enclosed
168 in brackets and a new regulation or new section of a regulation shall be
169 preceded by the word "(NEW)" in capital letters. Each proposed
170 regulation shall have a statement of its purpose following the final
171 section of the regulation. (4) The committee may permit any proposed
172 regulation, including, but not limited to, a proposed regulation which
173 by reference incorporates in whole or in part, any other code, rule,
174 regulation, standard or specification, to be submitted in summary form
175 together with a statement of purpose for the proposed regulation. On
176 and after October 1, 1994, if the committee finds that a federal statute
177 requires, as a condition of the state exercising regulatory authority,
178 that a Connecticut regulation at all times must be identical to a federal

179 statute or regulation, then the committee may approve a Connecticut
 180 regulation that by reference specifically incorporates future
 181 amendments to such federal statute or regulation provided the agency
 182 that proposed the Connecticut regulation shall submit for approval
 183 amendments to such Connecticut regulations to the committee not
 184 later than thirty days after the effective date of such amendment, and
 185 provided further the committee may hold a public hearing on such
 186 Connecticut amendments. (5) The agency shall prepare a fiscal note,
 187 including an estimate of the cost or of the revenue impact on the state
 188 and any municipality, and shall append a copy of the note to each
 189 copy of the proposed regulation. At the time of submission to the
 190 committee, the agency shall mail or submit a copy of the proposed
 191 regulation and the fiscal note, prepared in accordance with subsection
 192 (a) of section 4-168, as amended by this act, to (A) the Office of Fiscal
 193 Analysis which, within seven days of receipt, shall submit an analysis
 194 of the fiscal note to the committee; and (B) each joint standing
 195 committee of the General Assembly having cognizance of the subject
 196 matter of the proposed regulation. No regulation shall be found
 197 invalid due to the failure of an agency to submit a copy of the
 198 proposed regulation and the fiscal note to each committee of
 199 cognizance, provided such regulation and fiscal note has been
 200 submitted to one such committee.

This act shall take effect as follows and shall amend the following sections:		
Section 1	October 1, 2007	4-168(a)
Sec. 2	October 1, 2007	4-168a
Sec. 3	October 1, 2007	4-168b
Sec. 4	October 1, 2007	4-170(b)

CE *Joint Favorable Subst.*

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either chamber thereof for any purpose:

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Effect	FY 08 \$	FY 09 \$
Department of Environmental Protection	GF - Cost	See Below	See Below
Department of Agriculture	GF - Cost	See Below	See Below
Department of Economic & Community Development	GF - Cost	None	None
Public Health, Dept.	GF - Cost	See Below	See Below
Various State Agencies	GF - Cost	Potential Minimal	Potential Minimal

Note: GF=General Fund

Municipal Impact: None

Explanation

It is anticipated that the Department of Economic and Community Development and the Office of Business Advocate can handle the requirements of the bill within existing budgetary resources.

It is estimated that the Department of Environmental Protection (DEP) and Public Health (DPH) will each incur costs to hire an associate research analyst in order to comply with the bill. Neither agency presently employs the staff having the expertise to conduct economic impact analyses. In 2006 DPH filed 19 regulations which affected businesses and DEP files over 10 a year. An FY 08 cost to each agency of \$53,000 for salaries plus additional funds for fringe benefits¹

¹ The fringe benefit costs for state employees are budgeted centrally in the Miscellaneous Accounts administered by the Comptroller. The estimated first year fringe benefit rate for a new employee as a percentage of average salary is 25.8%, effective July 1, 2006. The first year fringe benefit costs for new positions do not include pension costs. The state's pension contribution is based upon the prior year's certification by the actuary for the State Employees Retirement System (SERS). The SERS 2006-07 fringe benefit rate is 34.4%, which when combined with the non pension fringe benefit rate totals 60.2%.

will be incurred based upon three-quarter year implementation. This cost would increase in FY 09 to \$71,000 to both agencies to reflect full year support for these positions.

The Department of Agriculture (DOAG) would require additional resources of approximately \$10,000 - \$20,000 per regulation. The DOAG does not have the expertise to conduct economic impact analyses. The exact cost to the DOAG would depend upon the number of regulations required which vary from year to year.

It is also anticipated that additional agencies could be impacted by these requirements. The exact increase in costs would depend upon the number of regulations filed and their complexity and is unknown at this time.

The Out Years

The annualized ongoing fiscal impact identified above would continue into the future subject to inflation.

OLR Bill Analysis**sSB 1179*****AN ACT REQUIRING ECONOMIC IMPACT ANALYSES FOR PROPOSED REGULATIONS.*****SUMMARY:**

This bill requires any state agency proposing a regulation on or after October 1, 2007 to identify how it affects small businesses (i.e., economic impact analysis (EIA)). The law already requires agencies to determine if a proposed regulation adversely affects small businesses and, if it does, to consider other less burdensome ways to achieve the regulation's goal (i.e., regulatory flexibility analysis). The bill requires the agencies to include both analyses in the regulation's official record.

Before adopting a regulation, the bill requires agencies to notify the public about how to obtain copies of two analyses. The agencies must also notify the business advocate about the regulation if they believe it could adversely affect small businesses, and he must help them prepare the flexibility analysis. Agencies must already notify the Department of Economic and Community Development about proposed regulations that could adversely affect small businesses, and the department must help them prepare the analysis.

Under the bill, a proposed regulation does not take effect until the agency submits the EIA and the regulatory flexibility analysis to the Regulations Review Committee. By law, the regulation does not take effect until the agency gives the committee the original proposed regulation, as approved the attorney general, and 18 copies.

EFFECTIVE DATE: October 1, 2007

EIA**Scope**

The EIA must identify how each proposed regulation could affect small businesses. It must estimate the number of small businesses that would have to comply with the regulation and how much it would cost them to do so. Costs include keeping records and submitting reports.

By law, independently owned and operated businesses with fewer than 50 full-time employees or gross sales under \$5 million are considered small businesses. But agencies may set a higher full-time employee limit if necessary to meet or address specific small business needs and concerns. The limit cannot exceed the applicable federal standard or 500 employees, whichever is less.

Exempted Regulations

As with the regulatory flexibility analyses, agencies do not have to prepare an EIA for emergency regulations or those indirectly affecting small businesses. The latter include regulations for the state's small and minority contractor set-aside program and those setting cost standards for nursing homes, long-term care facilities, and other service businesses.

Public Notice

Before adopting a regulation, the agencies must inform the public about how it can obtain copies of the EIA and the regulatory flexibility analysis. They must include this information in the notice advising the public of their intent to adopt regulations. By law, agencies must publish this notice in the *Connecticut Law Journal* at least 30 days before adopting a regulation.

BACKGROUND

Business Advocate

PA 06-83 established the Office of Business Advocate to:

1. serve collect and disseminate information about public and private business assistance programs and
2. help micro businesses assess their needs and access the

programs that can address those needs.

COMMITTEE ACTION

Commerce Committee

Joint Favorable Substitute

Yea 19 Nay 0 (03/15/2007)